

1 **EXHIBIT “A”**

2 **40.440 HABITAT CONSERVATION**

3
4 **40.440.010 INTRODUCTION**

5 A. Purpose.

6 The purpose of this chapter is to further the goal of no net loss of habitat functions and values
7 within designated habitat areas by protecting environmentally distinct, fragile and valuable fish
8 and wildlife habitat areas, as defined in Section 40.440.010(C) for present and future generations,
9 while also allowing for reasonable use of private property. This chapter intends to conserve the
10 functional integrity of the habitats needed to perpetually support fish and wildlife populations.

- 11 1. These purposes are to be carried out by reviewing impacts of proposed activities within
12 designated habitat areas, and through the development of education, outreach and incentive
13 programs. Review under this chapter shall be based on best available science and the
14 mandates of the Washington Growth Management Act, and shall include consultation with
15 the Washington Department of Fish and Wildlife (WDFW). The county shall emphasize
16 education and voluntary conservation options prior to regulatory enforcement.
- 17 2. Within areas designated by this chapter, development or clearing activities which degrade
18 habitat should generally be avoided where possible. However, activities listed as exempt in
19 this chapter can be undertaken in habitat areas without additional review. Activities not listed
20 as exempt can be undertaken following county review if they do not substantially diminish
21 the habitat functions and values present.
- 22 3. It is the intent of the board that this chapter be administered with flexibility and attention to
23 site-specific characteristics.

24
25 B. Applicability.

- 26 1. General. Review under the standards of this chapter shall apply to any proposed development
27 or non-development clearing activities within designated habitat areas, defined in Section
28 40.440.010(C), which are not listed as exempt, pursuant to Table 40.440.010-1.
- 29 a. Development activities are those proposals already subject to existing county land
30 division, building, grading or other review processes.
- 31 b. Non-development clearing activities are proposals which are not otherwise subject to
32 county review, but involve the alteration or removal of vegetation in designated habitat
33 areas.
- 34 2. Activities Adjacent to Certain Designated Habitat Areas. Proposed new single-family
35 residential development occurring immediately outside but within three hundred (300) feet of
36 designated priority species polygons or within one hundred (100) feet of designated non-
37 riparian priority habitat polygons shall require consultation with ~~the Washington Department~~
38 ~~of Fish and Wildlife (WDFW)~~ prior to issuance of a development permit. In such cases,
39 further review under this chapter is not required unless WDFW finds that there are potential
40 adverse impacts. Agricultural activities adjacent to designated agricultural riparian areas are
41 subject to Section 40.440.040(B). Other proposed land divisions and nonresidential
42 development adjacent to designated wildlife sites shall be subject to SEPA as normally

required by Chapter 40.570, (State Environmental Policy Act), and mitigative measures established if there are adverse impacts to the adjacent designated habitat areas.

3. Exempt Activities.

- a. All proposed activities outside designated habitat areas are exempt from review under this chapter, except where noted in Section 40.440.010(B)(2) and 40.440.040(B).
- b. Within designated habitat areas exempt activities are listed in Section 40.440.010(D). These do not require review.
- c. All other ~~Proposed~~ activities within habitat areas which are not consistent with an approved stewardship plan or subject to 40.440.040 shall be subject to the provisions of Section 40.440.010 ~~020(D)~~.

C. Habitat Areas Covered by This Chapter.

1. Categories. This chapter shall apply to nonexempt activities as defined in Table 40.440.010-1 that are proposed within the following habitat areas:
 - a. Riparian Priority Habitat. Areas extending outward on each side of the stream (as defined in section 40.100.070, Definitions) from the ordinary high water mark to the edge of the one hundred (100) year floodplain, or the following distances, if greater:
 - (1) DNR Type ~~1 and 2~~ S waters, two hundred fifty (250) feet;
 - (2) DNR Type ~~3~~ F waters, two hundred (200) feet;
 - (3) DNR Type ~~4 Np and 5~~ waters, one hundred ~~fifty (150)~~ (100) feet.
 - (4) DNR Type Ns waters, seventy five (75) feet.

~~Type 1 – 5 definitions based on WAC 222-16-031. Erosion gullies or rills, and streams which are manmade, less than six (6) inches wide or not having a defined bed and/or bank are not included. Water types are defined and mapped based on WAC 222-16-030, (Forest Practices Rules). Type S streams include shorelines of the state and have flows averaging 20 or more cubic feet per second; Type F streams are those that are not Type S but still provide fish habitat; and type N streams do not have fish habitat and are either perennial (Np) or seasonal (Ns). All streams are those areas where surface waters flow sufficiently to produce a defined channel or bed as indicated by hydraulically sorted sediments or the removal of vegetative litter or loosely rooted vegetation by the action of moving water. Ns streams must connect to another stream above ground. Seasonal or intermittent streams are surface streams with no measurable flow during thirty consecutive days in a normal water year.~~
 - b. Other Priority Habitats and Species (PHS). Areas identified by and consistent with ~~the Washington Department of Fish and Wildlife~~ WDFW priority habitats and species criteria, including areas within one thousand (1,000) feet of individual species point sites. The county shall defer to ~~the Washington Department of Fish and Wildlife~~ WDFW in regards to classification, mapping and interpretation of priority habitat species.
 - c. Locally Important Habitats and Species. Areas legislatively designated and mapped by the county because of unusual or unique habitat warranting protection because of qualitative species diversity or habitat system health indicators. This subsection shall not apply to areas which have not been designated on official mapping. The criteria for mapping of

these areas are that they possess unusual or unique habitat warranting protection because of qualitative species diversity or habitat system health indicators. Recommendations for mapping areas meeting these criteria may be submitted by any person or group, and shall be reviewed annually by the county in conjunction with the plan amendments docket process as specified by Section 40.560.030, (Amendments Docket). Notice of any such recommendations deemed to merit formal consideration shall be provided to impacted property owners pursuant to Section 40.510.030(E)(3), (Type III Process). Such recommendations will not be reviewed as part of individual development requests.

2. Mapping.

a. The above habitat areas are mapped on a countywide basis in the adopted “Priority Habitats and Species Map.” Maps are on file in the department and are available for public viewing and circulation. Further distribution of mapped information and notification to potentially impacted property owners will be completed as indicated in Sections 40.440.020(D)(1) and (E)(1).

b. Maps of individual locations of sensitive, threatened, or endangered wildlife species are maintained separately. Under law, this information is not available for widespread public distribution unless authorized by the ~~Washington Department of Fish and Wildlife~~ WDFW. However, property owners may obtain all existing information for their properties upon request.

c. Official maps shall be updated by the county as warranted by new information using the annual review process.

3. Best Available Science. Definitions and maps of habitat areas are based on best available science, as defined in WAC 365-195-905, (Criteria for determining which information is the "best available science") and described in the following documents:

- a. 1999 Washington Department of Fish and Wildlife Priority Habitats and Species List;
- b. 1997 Management Recommendations for Washington’s Priority Habitats;
- c. The list of best available science references as maintained by the responsible official; and
- d. Associated GIS data files maintained by Clark County Department of Assessment and GIS.

Best available scientific data supporting this chapter may be updated and/or re-evaluated as part of future ~~UDC~~ Title 40, (Uniform Development Code) amendments.

4. Determining Site Specific Applicability. In the event of inconsistencies, official habitat area definitions shall prevail over countywide maps in determining applicability of this chapter. The county shall follow the recommendations of ~~the Washington Department of Fish and Wildlife~~ WDFW in the interpretation of site-specific conditions as they relate to the definition of priority habitat and species.

D. Activities Reviewed Under This Chapter.

This chapter applies to activities within designated priority and locally important habitat areas as described in Table 40.440.010-1.

Table 40.440.010-1. Exempt and Reviewed Activities		
Proposal	Is a clearing	Are any additional fees or

Table 40.440.010-1. Exempt and Reviewed Activities		
	review required?	review timelines required?
Land division or lot reconfiguration entirely outside habitat areas, <u>except as subject to 40.440.010(B)(2)</u>	No. Exempt	Fees pursuant to Chapter 6.430110A.
Land division or lot reconfiguration containing habitat areas, <u>except as subject to 40.440.010(B)(2)</u>	Exempt if impacted lots establish building and clearing envelopes outside of habitat	Fees pursuant to Chapter 6.430110A. Adjustment to allow smaller lots necessary for critical lands protection can be provided without additional fees if consistent with overall zoning density as per Section 40.440.020 (C)(1)
Any activities on lots not in habitat areas, <u>except as subject to 40.440.010 (B)(2)</u>	Exempt	None
Any activities on portions of lots not containing habitat areas, <u>except as subject to 40.440.010 (B)(2)</u>	Exempt	None
Remodeling, or replacement or expansion, not to exceed twenty-five percent (25%) of the 1997 footprint, of existing homes or existing accessory buildings inside habitat areas. Home remodels, replacements or expansions of up to five hundred (500) square feet, or mobile home replacements of single wide with double wide models are also exempt	Exempt	None
Farming, forestry or vegetation removal activities inside existing yards, areas of existing agricultural use, or existing cultivated portion of habitat areas <u>Maintenance of existing yards and landscaping in habitat areas</u>	Exempt	None
Clearing authorized by forest practices applications other than conversions in habitat areas. Forest practices in habitat areas that are regulated by the Washington Department of Natural Resources under the Forest Practices Rules or regulated under Clark County Code Section 40.260.080, Forest Practices, except conversions or conversion option harvest plans (COHP's)	Exempt	None
<u>Existing agricultural uses within habitat areas</u>	<u>Exempt</u>	<u>None</u>
Emergency clearing to abate immediate danger to persons or property. For emergency clearing of hazard trees, remove only that portion of a hazard tree as is minimally necessary to remediate the hazard. Cut wood should be left in the habitat area	Exempt	None
<u>Clearing necessary for the emergency repair of utility or public facilities, provided that notification of emergency work that causes substantial</u>	<u>Exempt</u>	<u>None</u>

Table 40.440.010-1. Exempt and Reviewed Activities		
<u>degradation to functions and values is reported in a timely manner.</u>		
<u>Clearing for operation, maintenance or repair of existing utilities or public facilities that does not further increase the impact to, or encroach further within the habitat area</u>	<u>Exempt</u>	<u>None</u>
<u>Fire hazard clearing recommended by fire marshal, or consistent with written fire marshal or fire chief guidelines in habitat areas</u>	<u>Exempt</u>	<u>None</u>
Clearing of defined nuisance vegetation in habitat areas which utilizes methods that minimize disturbance of soils and non-nuisance vegetation. <u>Replanting with native vegetation should be pursued to prevent re-infestation</u>	Exempt	None
Clearing as minimally necessary for placement of fencing, private wells, septic systems or individual lot sewer, water, electrical or utility connections in habitat areas, where practical alternatives do not exist	Exempt	None
Clearing as minimally necessary for stream bank restoration, for native replanting or enhancements in habitat areas	Exempt	None
Clearing as minimally necessary for routine road maintenance activities in habitat areas consistent with Regional Road Maintenance ESA Program Guidelines	Exempt	None
Clearing as minimally necessary for soil, water, vegetation or resource conservation projects having received an environmental permit from a public agency in habitat areas	Exempt	None
Clearing as minimally necessary for creating a 4-foot or narrower path using natural, wood-based, or <u>gravel vegetated pervious</u> surfacing in habitat areas	Exempt	None
Clearing as minimally necessary for surveying or testing in habitat areas	Exempt	None
Clearing or development in riparian habitat areas which is at least one hundred (100) feet from the waterline and separated by a continuous public or private roadway serving three (3) or more lots	Exempt	None
Non-development clearing activities in habitat areas consistent with a recorded stewardship plan for which any mitigation specified in the plan is timely completed	Exempt	None
New home or other construction in habitat areas	Review required	No additional timelines.

Table 40.440.010-1. Exempt and Reviewed Activities

		Applicable review (building permit, etc.) must comply with ordinance standards. Fees pursuant to Title 6
All other vegetation clearing in habitat areas	Review required	Fees pursuant to Title 6. Applicable review, if any, must comply with ordinance standards. If no other review involved, clearing request will be reviewed administratively

40.440.020 STANDARDS AND NONREGULATORY MEASURES

A. Approval Criteria.

Approval shall be granted for all proposals demonstrating compliance with the following criteria. Approval shall be required prior to clearing or development.

1. Intent. Designated habitats are to be protected through avoidance or reduction of ~~most~~ the impacts of activities. This section provides standards for the review of proposed nonexempt activities within designated habitat areas.
2. Basic Criteria. Applicants proposing activities subject to this chapter shall demonstrate that the activity:
 - a. Substantially maintains the level of habitat functions and values as characterized and documented using best available science; and
 - b. Minimizes habitat disruption or alteration beyond the extent required to undertake the proposal.
3. Mitigation Measures.
 - a. Mitigation measures may be established pursuant to the above basic criteria.
 - b. Disrupted functions and values shall be mitigated on-site as a first priority, and off-site thereafter.
 - c. An up-to-date science-based guide such as the "Clark County Guide to Best Management Practices for Permitted Development in Habitat Areas" should be used to guide on-site mitigation. Off-site mitigation should be guided by applicable watershed, fish recovery, sub-basin or other science-based plans. Any science used to guide mitigation actions, whether on-site or off-site must meet the criteria and characteristics of best available science listed in WAC 365-195-905, (Criteria for determining which information is the "best available science"), or the state standards in effect at the time of application.
 - d. Subject to individual circumstances, potential mitigation measures may include, but are not limited to the following:
 - ~~a.~~(1) Avoiding the impact all together by not taking a certain action or parts of an action;
 - ~~b.~~(2) Exploring alternative on-site locations to avoid or reduce impacts of activities;

- 1 e-(3) Preserving important vegetation and natural habitat features by establishing buffers
2 or by limiting clearing or alteration;
- 3 (4) Replacing invasive exotic plants with native species (refer to the Clark County
4 Native Plant Communities Guide or other relevant publication for guidance);
- 5 (5) Prohibiting introduction of invasive plant species in habitat areas;
- 6 ~~d-(6)~~ Enhancing, restoring or replacing vegetation or other habitat features and functions.
7 In riparian areas, this may include ~~buffer~~ riparian zone averaging as specified in
8 Section 40.440.020(C)(3);
- 9 (7) Using native plants where appropriate when planting within habitat areas (refer to
10 the Clark County Native Plant Communities Guide or other relevant publication for
11 guidance);
- 12 e-(8) Managing access to habitat areas, including exclusionary fencing for livestock if
13 needed;
- 14 (9) Stream crossings:
- 15 (a) Using existing stream crossings whenever a review of suitability, capacity,
16 access and location, habitat impacts of alternatives, maintenance, liability and
17 economics indicates the existing crossing is feasible;
- 18 (b) Constructing new stream crossings, when necessary, in conformance to the Water
19 Crossing Structure Standards in WAC 220-110-070, (Hydraulic Code Rules),
20 which are incorporated by reference;
- 21 ~~f-(10)~~ Seasonally restrictioning ~~on~~ construction activities;
- 22 ~~g-(11)~~ Implementing best management practices and integrated management practices;
- 23 ~~h-(12)~~ Monitoring or review of impacts and assurance of stablilation of the area;
- 24 ~~i-(13)~~ Establishing performance measures or bonding;
- 25 ~~j-(14)~~ Establishing conservation covenants and other mechanisms to insure long-term
26 preservation or maintenance of mitigation actions;
- 27 (15) Utilizing low impact development techniques;
- 28 (16) Promoting water quality by limiting the use of lawn and garden chemicals in habitat
29 areas; and/or
- 30 (17) Avoiding topsoil removal and minimizing topsoil compaction.
- 31 ~~k-(18)~~ Compensating for on-site impacts through off-site mitigation only when inside the
32 unincorporated area, as close as practicable to the site, and when all reasonable on-
33 site mitigation alternatives have been exhausted. Off site mitigation shall be
34 functionally equivalent, be reviewed on a case by case basis in consultation with
35 the Washington Department of Fish and Wildlife, and shall delegate adequate
36 enforcement authority to the county, as approved by the Prosecuting Attorney's
37 Office. For riparian habitat, off-site mitigation must also be located within the same
38 watershed. Public regional development activities reviewed and approved by
39 federal or state agencies shall be exempt from the geographic restrictions of this
40 subsection. Providing off-site mitigation, subject to the following conditions;

- 1 (a) When the combination of on-site and off-site mitigation fails to substantially
2 maintain functions and values within the stream system, the application shall be
3 denied;
- 4 (b) All reasonable on-site mitigation alternatives have been exhausted;
- 5 (c) Off-site mitigation is functionally equivalent to the impacts;
- 6 (d) Off-site mitigation is appropriate in size and scale to the impacts that are not fully
7 mitigated on the original site;
- 8 (e) Proposed off-site mitigation is reviewed by the county on a case-by-case basis
9 with input from WDFW;
- 10 (f) Off-site mitigation may be in the form of:
- 11 i. The purchase of credits from a permitted habitat bank, or
- 12 ii. A voluntary contribution to the established Cumulative Effects Fund for the
13 watershed within which the project is located, or
- 14 iii. A specific mitigation project:
- 15 [a] Specific off-site mitigation projects for riparian habitat areas must be
16 located within the same watershed as the original site,
- 17 [b] Specific off-site mitigation projects for all other habitat areas must be in
18 an unincorporated area as close as possible to the original site,
- 19 [c] Public regional development activities that are reviewed and approved by
20 federal and state agencies are exempt from these geographic restrictions;
- 21 (g) Adequate enforcement authority must be delegated to the county, as
22 approved by the Prosecuting Attorney;
- 23 4. The responsible official shall approve, approve with conditions or deny proposals based on
24 compliance with the criteria and the adequacy of proposed mitigation measures to ensure
25 compliance, and applicable reasonable use assurances of Section 40.440.020(B).
- 26 5. The responsible official shall retain final authority for such determinations, which shall be
27 issued consistent with the review timelines of Chapter 40.510, (Type I, II, III, and IV
28 Processes), and shall be based on best scientific information and analysis available within
29 those timelines.
- 30 6. The responsible official shall consult with and substantially follow the resulting
31 recommendations of ~~the Washington Department of Fish and Wildlife~~ WDFW, unless
32 alternative determinations are supported by scientific analysis.
- 33 B. Reasonable Use Assurances. ~~The following assurances shall apply in implementing the standards~~
34 ~~of this chapter:~~ The county assures property owners of the following, as long as impacts are
35 mitigated to the maximum extent practicable, permit conditions limiting locations and requiring
36 mitigations may be imposed, and erosion control measures required:
- 37 1. ~~The standards of this chapter shall not be used to preclude the placement of a single family~~
38 ~~residence on an otherwise legally buildable lot of record. Standards may be applied on~~
39 ~~established properties to limit the proposed location of structures and proposed removal of~~
40 ~~vegetation. This chapter shall not be used to prohibit:~~

- a. Placement of a single-family residence and residential accessory structures on an otherwise legally buildable lot of record;
- b. Expansion of a home existing prior to 1997, not to exceed 25% of the 1997 footprint;
- c. Replacement of a single-wide mobile home with another dwelling, not to exceed twice the footprint of the original mobile home; or
- d. Fire hazard clearing recommended by the fire marshal, or consistent with written fire marshal or fire chief guidelines.
2. This chapter shall not be used to deny all reasonable economic use of private property. These criteria must be met in order to verify denial of all reasonable economic use:
 - a. The application of this chapter would deny all reasonable economic use of the property;
 - b. No other reasonable economic use of the property has less impact on the habitat area;
 - c. Any habitat alteration is the minimum necessary to allow for reasonable economic use of the property; and
 - d. The inability of the applicant to derive reasonable economic use of the property is not the result of actions by the applicant after May 30, 1997.
3. The standards of this chapter shall not be used to deny or reduce the number of lots of a proposed rural land division allowed under applicable zoning density.
4. This chapter shall not be used to deny a development proposal from a public agency or public utility, if:
 - a. There is no practical alternative to the proposed project with less impact on the habitat area;
 - b. The ability of the public agency or utility to provide services to the public would be unreasonably restricted; and
 - c. The application is approved through a Type III process pursuant to Section 40.510.030, (Type III Processes). Fees are subject to the Type III Variance fee schedule in Chapter 6.110A.010, (Development Fees).
- C. The following regulatory alternatives or incentives shall apply in implementing the standards of this chapter:
 1. Proposed land divisions involving critical areas may transfer density as follows:
 - a. Rural area land divisions may utilize the cluster provisions of 40.210.020(D), (Rural Cluster Development).
 - b. Urban area land divisions may utilize density transfer provisions of Section 40.220.010(C)(5), (Density Transfer).
 2. Existing abutting nonconforming lots under common ownership may be reconfigured under the standards of Section 40.210.010(D), (Non-conforming Lots).
 3. Required riparian zone widths on clearing proposals on existing lots may be varied through the use of internal riparian zone averaging. Subject to review under this chapter, for clearing proposals on existing lots, portions of the riparian zone can be reduced up to fifty percent (50%) from the normal standards of this chapter if riparian zone widths are correspondingly increased elsewhere within the applicant parcel, such that the overall size and function and values of the riparian zone are maintained in the parcel. Riparian zone averaging proposals

1 must clearly identify the existing riparian functions and values on the parcel and any impacts
2 that the proposed averaging may have upon them.

3 4. In evaluating forest practice conversion applications under this chapter, the county may allow
4 for modest levels of short-term degradation of habitat function if it is offset by long-term
5 benefits provided by a conservation covenant or other permanent protective measure. Such
6 allowances shall only be made following the recommendation of ~~the Washington Department~~
7 ~~of Fish and Wildlife~~ WDFW.

8 D. Individual Stewardship Plans.

9 1. To encourage educational and voluntary conservation measures, the county shall notify
10 property owners potentially impacted by wildlife habitat area regulations, and shall assist any
11 owners interested in developing individual stewardship plans which will establish parameters
12 and guidelines for future on-site activities in designated habitat areas. In addition, property
13 owners may consult with WDFW and other agencies or private groups or individuals to
14 develop the scientific information for their stewardship plans.

15 2. The county shall provide information on best management practices and other educational
16 and explanatory materials to property owners. The county shall coordinate with ~~the~~
17 ~~Washington Department of Fish and Wildlife~~ WDFW and other agencies or private groups
18 with expertise in wildlife or land management in the development and distribution of these
19 materials.

20 3. The county shall work cooperatively with interested property owners to establish and record a
21 notice of stewardship plan. Stewardship plans should at a minimum include the following:

22 a. Mapping of existing structures, roads, driveways and known utilities, and property lines;

23 b. Mapping of existing designated habitat areas, water bodies, known wetlands, vegetation
24 and wildlife types, and yards or cultivated areas;

25 c. Identification of functions and values associated with the habitat areas, water bodies,
26 wetlands and vegetation and wildlife;

27 d. Mapping and written description of future activities on the site including time frame; and

28 ~~d.~~ e. Mapping and description of the protective and mitigative measures, if any, for the
29 identified functions and values to be undertaken as part of plan.

30 4. Notice of stewardship plans shall be recorded and shall run with the land unless and until a
31 request for revocation or modification has been submitted by the property owner and
32 approved by the county. The county shall approve all such requests unless there are any
33 uncompleted mitigation measures which were agreed to in the stewardship plan as necessary
34 to compensate for clearing of habitat areas undertaken pursuant to the plan. Revocation may
35 trigger the tax penalties associated with withdrawal from an open space taxation program, if
36 applicable.

37 5. Property owners with approved stewardship plans are exempt from regulation under this
38 chapter for non-development proposals which are consistent with the stewardship plan and do
39 not otherwise require county building, grading, or other review.

40 6. Stewardship plans shall be approved under criteria in Section 40.440.020(A).

41 7. Appeals may be filed under the provisions of Chapter 40.510, (Type I, II, III & IV Processes).

42 E. Nonregulatory Implementation Measures.

As part of the implementation of this chapter and related efforts towards wildlife conservation, the county will undertake the following additional nonregulatory measures:

1. Education and Outreach Measures.

- a. Notify property owners within critical areas;
- b. Develop clear and understandable manuals explaining recommended best management practices for typical rural and urban land owner activities;
- c. Provide seminars and presentations for interested owners and groups;
- d. Coordinate efforts with existing conservation, stewardship or small resource user groups with expertise in wildlife or habitat area land management issues;
- e. Expand local wildlife inventory information through baseline survey of local habitats and species;
- f. Provide cooperative outreach to individual property owners in critical areas who wish to develop stewardship plans to establish parameters for future activities involving clearing on their property.

2. Incentive Measures.

- a. Create and/or expand incentives through the current use taxation program;
- b. Develop and/or expand land acquisition programs;-
- c. Develop non-monetary incentives for project proponents to exceed mitigation requirements.

F. Specific Activities.

Special procedures and standards apply to certain specific activities as provided for in Section 40.440.040.

G. Habitat Banking. (reserved)

40.440.030 ADMINISTRATION

A. Coordination with Other Permits.

Development proposals requiring review under this chapter which involve other county permits shall be reviewed under the timelines of the existing review without additional cost; provided, that application information required under this chapter (Section 40.440.030(C)) is submitted and approval criteria (Section 40.440.020(A)) are addressed.

B. Non-Development Proposals.

Non-development proposals not involving any other county application development reviews shall be reviewed as a Type I ministerial application under the timelines and procedural standards of Section 40.510.010, (Type I Process). Section 40.440.030(C) indicates application information to be submitted.

C. Submittal Information.

1. Applications for Proposed nonexempt activities requiring review under this chapter shall be submitted with applications as follows: the following:

- a. Development applications involving other county review shall submit application materials according to specifications of other reviews involved, and shall also include a completed proposed habitat activity form.
 - b. Non-development applications not involving other county review shall be submitted with a completed proposed habitat activity form.
2. Where required by state law, a completed environmental checklist pursuant to the State Environmental Policy Act (SEPA) shall also be submitted unless categorically exempted by the SEPA Rules.
 3. The county shall develop and make available proposed habitat activity forms. These forms shall clearly and concisely provide direction to applicants on what information is needed in the following areas:
 - a. Name, address, location, and basic tracking information for the application;
 - b. Existing conditions information, natural and manmade features on the site;
 - c. Description and mapping of proposed activities and how this would change existing conditions on the site.
 4. Proposals under this chapter are encouraged but not required to include a report or other assistance from a biologist, botanist, ecologist, or other similarly qualified or trained professional.
 5. Persons interested in establishing an individual stewardship plan for future activities as specified in Section 40.440.020(D) should contact the department.
- D. Permit Authority and Timelines.
1. An approval granted under this chapter shall remain valid until proposed activities are undertaken and completed. An approved permit not acted upon shall be valid for two (2) years, and upon showing of good cause, may be extended for an additional twelve (12) months.
 2. Approval for habitat area activities as part of other county development approvals shall be valid for a time period specified by the other permit(s) involved.
 3. Approved stewardship plans shall remain valid as specified in Section 40.440.020(D).
- E. Appeals.
- Appeals of county decisions under this chapter may be filed under the provisions of Chapter 40.510, (Type I, II, III & IV Processes).
- F. Enforcement.
- At such time as a violation of this chapter has been determined, enforcement action shall be commenced in accordance with the enforcement provisions of Title 32 of this code, (Enforcement), and may also include the following:
1. Applications for county land use permits on sites that have been found to be in violation of this chapter pursuant to the process set forth in Title 32 of this code, (Enforcement), shall not be processed until three (3) years after the completion of clearing; ~~provided, that if~~ provided, that the three (3) years may be reduced upon approval and implementation of a restoration or mitigation plan, to include the following:

- 1 a. A plan for the replanting of trees, brush and groundcover of a type and distribution
2 comparable to that existing prior to clearing; provided, that the responsible official may
3 approve alternative species in order to promote expedient soil stabilization, and may
4 require additional tree planting as mitigation for the loss of mature trees; and
- 5 b. A monitoring plan to assure at least a ninety percent (90%) survival rate of re-established
6 plantings after at least three (3) but not more than eight (8) growing seasons; and
- 7 c. Where fish and wildlife habitat areas are cleared in violation of this chapter, a plan to
8 restore habitat functionality, as it existed prior to the violation, subject to the review and
9 evaluation of ~~the Washington Department of Fish and Wildlife~~ WDFW.
- 10 d. Satisfaction of the terms and conditions of any judgement or order entered based upon the
11 violation.
- 12 e. Financial assurances in the form of a bond or other security acceptable to the county, in
13 an amount sufficient to re-establish the mitigation in the event of failure or subsequent
14 disturbance may be required by the responsible official. The financial assurances shall
15 remain in place for the length of the time specified for monitoring in the plan and shall be
16 released after a request by the applicant and a final inspection. In the event of failure of
17 the mitigation, failure to fully execute the mitigation plan, or subsequent disturbance,
18 forfeiture of the financial assurances shall be required and the funds shall be used to re-
19 establish the mitigation or to complete the execution of the plan. In the event that such
20 re-establishment or completion is deemed impractical by the director, the funds shall
21 accrue to the established Cumulative Effects Fund for the watershed within which the site
22 is located.
- 23 2. In the absence of any mitigation measures approved by the department for sites cleared in
24 violation of this standard, the county may refuse to approve any permit for up to an additional
25 three (3) years.

26 G. Specific Activities.

27 Special procedures and standards apply to certain specific activities as provided for in
28 Section 40.440.040.

29 **40.440.040 SPECIFIC ACTIVITIES**

30 The following specific activities are subject to special procedures and standards as set forth below.

31 A. Routine Utility and Public Facility Maintenance and Operations.

32 The responsible official may issue programmatic permits for routine maintenance and operations
33 of utilities and public facilities. The programmatic permit process shall not deny or unreasonably
34 restrict a utility's or public agency's ability to provide services to the public. Programmatic
35 permits only authorize activities specifically identified in the permit approval.

36 1. Application submittal requirements. Unless waived by the responsible official with specific
37 findings in the approval document, applications for programmatic habitat permits shall
38 include a programmatic permit plan that includes the following:

- 39 a. A discussion of the purpose and need for the permit;
- 40 b. A description of the scope of activities in habitat areas;
- 41 c. Identification of the geographical area to be covered by the permit;
- 42 d. The range of functions and values within designated habitat areas covered by the permit;

1 e. Specific measures and performance standards to be taken to avoid, minimize and mitigate
2 impacts on the functions and values:

3 (1) Procedures for identification of designated habitat areas;

4 (2) Maintenance practices proposed to be used;

5 (3) Restoration measures;

6 (4) Mitigation measures and assurances;

7 (5) Annual reporting to the responsible official that documents compliance with permit
8 conditions and proposes any additional measures or adjustments to the approved
9 programmatic permit plan;

10 (6) Reporting to the responsible official any specific habitat degradations resulting from
11 maintenance activities when the degradation occurs or within a timely manner;

12 (7) Responding to any department requests for information about specific work or
13 projects;

14 (8) Procedures for reporting and/or addressing activities outside the scope of the
15 approved permit.

16 (9) Training all employees, contractors and individuals under the supervision of the
17 applicant who are involved in permitted work.

18 2. Permit Review.

19 a. Programmatic permit applications that are exempt from SEPA are subject to type I
20 review.

21 b. Programmatic permit applications that are not exempt from SEPA are subject to type II
22 review.

23 c. Programmatic permit applications under type II review shall not be subject to the
24 distribution requirements of CCC 40.510.020(E)(2)(a)(3), (Public Notice). Within
25 fourteen (14) calendar days after the date an application is accepted as fully complete, the
26 county shall publish in a newspaper of general circulation a summary of the notice,
27 including the date, time and manner of making comments, the nature and location of the
28 proposal and instructions for obtaining further information.

29 3. Findings and Approval.

30 a. A decision approving, denying or reauthorizing a programmatic permit shall be supported
31 by findings of fact relating to the standards and requirements of this chapter.

32 b. An approved programmatic permit must, at a minimum, include:

33 (1) A programmatic permit plan; and

34 (2) A provision stating the duration of the permit.

35 4. Duration and Reauthorization.

36 a. The duration of a programmatic permit is for five years unless:

37 (1) An annual performance based reauthorization program is approved within the permit,
38 or;

39 (2) A shorter duration is supported by findings.

- 1 b. Requests for reauthorization of a programmatic permit must be received prior to the
2 expiration of the original permit.
- 3 (1) Reauthorization is reviewed and approved through the process described in
4 subsection (A)(1-3).
- 5 (2) Permit conditions and performance standards may be modified through the
6 reauthorization process.
- 7 (3) The responsible official may temporarily extend the original permit if the review of
8 the reauthorization request extends beyond the expiration date.
- 9 B. Agricultural Uses, including Animal Husbandry (reserved).